

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TONY D. SWANSON,

Petitioner,

vs.

E.K. McDANIEL, *et al.*,

Respondents.

3:07-cv-0232-RCJ-VPC

ORDER

This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by petitioner, a state prisoner who is represented by counsel. On September 22, 2009, this Court entered an order granting respondents' motion to dismiss the first amended petition. (ECF No. 43). Judgment was entered that same date. (ECF No. 44). Petitioner appealed. (ECF No. 45).

In an unpublished memorandum opinion filed May 15, 2012, the United States Court of Appeals for the Ninth Circuit affirmed in part, reversed in part, and remanded the case to this Court for further proceedings. (ECF No. 49). The Court of Appeals affirmed this Court's ruling that Ground Three of the first amended petition (FAP) does not relate back to his original, timely petition. (*Id.*). The Court of Appeals held that this Court erred in finding that Grounds One and Two of the FAP do not relate back to the original petition. (*Id.*). The Court of Appeals found that Grounds One and Two are "tied to a common core of operative facts, similar in time and type" to the grounds set forth in the original petition. (*Id.*, at p. 3). Finally, the Court of Appeals affirmed this

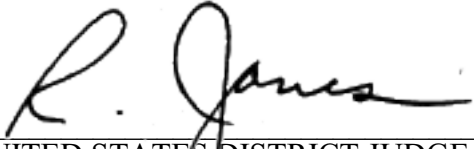
1 Court's ruling that petitioner is not entitled to equitable tolling of the AEDPA statute of limitations.
2 (*Id.*, at pp. 3-4).

3 **IT IS THEREFORE ORDERED** that this action **SHALL PROCEED** on Grounds One and
4 Two of the first amended petition (FAP).

5 **IT IS FURTHER ORDERED** that respondents **SHALL FILE AN ANSWER** addressing
6 the merits of Grounds One and Two of the first amended petition (FAP) within **forty-five (45) days**
7 from the date of entry of this order.

8 **IT IS FURTHER ORDERED** that petitioner **SHALL FILE** a reply within **forty-five (45)**
9 **days** from the date of being served with the answer.

10 Dated this 11th day of March, 2013.

11 
12 _____
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26